Summary of SC101626, *In re: Kimberly M. Gardner*
Original disciplinary action
Argued and submitted September 24, 2026; opinion issued November 24, 2026

Attorneys: The chief disciplinary counsel, Andrea Spillars, represented her office in Jefferson City, (573) 635-7400. Gardner was represented by Ronald S. Sullivan, an attorney in Washington, D.C., (202) 313-8313, and Maurice Foxworth, an attorney in St. Louis, (314) 398-5381.

Disclaimer: *This summary is not part of the Court's opinion. It is provided by communications counsel for the convenience of the reader to help understand issues in the opinion. Any quotes or citations should be to the Court's opinion, not this summary.*

Overview: Both the chief disciplinary counsel and a former circuit attorney reject a disciplinary hearing panel's finding that the attorney violated the rules of professional conduct and should be reprimanded after she reimbursed herself from her office's contingent fund for disciplinary fees and costs she incurred in a prior disciplinary case. In a 7-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri disbars the attorney. The attorney's misappropriation of public monies for her personal disciplinary fees violates rules of professional conduct. The combination of her misappropriation of public funds and misrepresentations to this Court, along with her status as a public official and her disciplinary history, warrant disbarment. Her reliance on the advice of counsel does not absolve her of her personal responsibility to act ethically.

Judge Joseph L. Hensley Jr. – a judge of the Missouri Court of Appeals, Southern District – sat in this case by special designation in place of Judge Robin Ransom.

Facts: In 2022, while previously serving as St. Louis city's elected circuit attorney, Kimberly Gardner was reprimanded for violating the rules of professional conduct and was ordered to pay $5,004.33 in disciplinary fees and court costs. At her request, Gardner was allowed to set up a monthly payment plan until she completed the full payments. She then asked her disciplinary attorney if she could be reimbursed those payments from the circuit attorney's office contingency fund, which is governed by state law. In an unsigned draft opinion letter, the attorney said he was aware of private law firms paying disciplinary fees directly but had not reviewed any law regarding similar reimbursement from public funds, concluding reimbursement would be proper as long as the circuit attorney's office "deems it appropriate under its own policies or procedures." Gardner did not investigate those policies, procedures, or relevant law and did not seek informal guidance from the legal ethics counsel's office. But she directed her chief clerk to issue four checks, made payable to Gardner, from the office's contingent fund reflecting the payments she made to this Court to satisfy her disciplinary fees. Gardner co-signed each reimbursement check. The United States attorney's office for the Eastern District of Missouri later investigated these payments, determining they violated federal law. To avoid prosecution, Gardner entered into a pre-charge diversion agreement in which she accepted responsibility for directing employees of her office to issue checks to her from public funds to reimburse payments she made for her personally assessed fees and costs. The agreement required Gardner to reimburse the fund. The chief disciplinary counsel's office brought disciplinary charges against Gardner, alleging her conduct violated both federal and state law and rules of professional conduct. At the disciplinary hearing, Gardner did not testify but argued her conduct

was proper because she relied on advice of counsel in seeking reimbursement from the contingency fund. The disciplinary hearing panel found Gardner violated Rule 4-8.4 and recommended she be reprimanded. Both parties rejected the recommendation; the chief disciplinary counsel seeks harsher discipline, and Gardner maintains her conduct was proper.

Disposition: Disbarred.

Court en banc holds: (1) Gardner violated Rules 4-8.4(b), (c), and (d). She misused public monies in the circuit attorney's contingent fund, reflecting adversely on her honesty, trustworthiness, and fitness to practice law. Paying disciplinary fees she incurred for her personal violations of the rules of professional conduct is not related to the "proper and vigorous prosecution of the duties" of the office, as required by section 56.530, RSMo. Her unauthorized reimbursement was a criminal act under federal law. Although she now argues she was unaware of the state law governing the fund, and, therefore, could not form the intent to violate the federal law, the record shows she signed a diversion agreement in which she acknowledged she was not entitled to reimbursement and accepted responsibility for her behavior. Further, sending this Court installment payments from her personal funds while reimbursing herself with public monies from the contingent fund shows Gardner's intent to deceive this Court as to the source of the funds. This misrepresentation, along with directing her employees to make the payments from the contingent fund, was conduct prejudicial to the administration of justice.

(2) Gardner may not rely on advice of counsel as a defense for her misconduct. She could not reasonably rely on the limited, informal, and incomplete advice she received, and she sought no other guidance about the propriety of her conduct. When questioned, Gardner told her chief clerk the reimbursement was proper because the attorney had said so. But his limited opinion stated only private law firms had reimbursed private attorneys for disciplinary fees, and Gardner's proposed reimbursement would be proper only if allowed by the circuit attorney's office policies and procedures. Relying solely on his equivocal opinion was tantamount to willful ignorance of the law. Gardner was personally responsible for following the rules of professional conduct.

(3) Disbarment is the appropriate sanction. It is the baseline sanction for misappropriating client funds, and misappropriating public funds is akin to taking from one's clients. Although Gardner cooperated with the disciplinary authorities, relying on advice of counsel is not an enumerated mitigator. Neither her diversion agreement nor her payment of restitution as the agreement required can mitigate against discipline, as she used them to avoid criminal liability. Her remorse is disingenuous, given she continues to argue she has not violated the rules of professional misconduct. Gardner's conduct shows a financially selfish motive, and she deceived this Court about the source of her payments. Additionally, her legal experience and her position as a public official hold her to a higher standard. Her unfamiliarity with statutes applying to her office undermines her fitness to practice law, and, regardless of what her chief clerk knew about the fund, it was solely Gardner's obligation to ensure public monies were not misused.